

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

RICHARD D. MCKEAN,

Plaintiff,

v.

CIV-09-1129 WJ/LAM

SALLY HERNANDEZ, et al.,

Defendants.

ORDER TO SHOW CAUSE

THIS MATTER is before the Court *sua sponte* for an order to show cause why Plaintiff's claims against Defendant Connie Martinez should not be dismissed for failure to prosecute. Plaintiff filed his *Amended Civil Complaint* (Doc. 7) on April 6, 2010.¹ On March 10, 2011, the Court granted Plaintiff's motion for limited discovery for the purpose of locating Ms. Martinez and allowed Plaintiff ten days in which to serve upon Defendants written discovery limited to the issue of Defendants' knowledge of the whereabouts of Ms. Martinez. [Doc. 45 at 2]. There is no indication on the docket that Plaintiff has served a copy of the summons and complaint upon Ms. Martinez. Federal Rule of Civil Procedure 4(m) states:

If a defendant is not served within 120 days after the complaint is filed, the court -- on motion or on its own after notice to the plaintiff -- must dismiss the action without prejudice against that defendant or order that service be made within a specified time.

¹The Court notes that all claims brought by Plaintiff Jeanie C. McKean have been dismissed, so Plaintiff Richard D. McKean is the only remaining plaintiff in this case. See *Memorandum Opinion and Order on Defendant's Motion to Dismiss and Motion to Strike Second Amended Complaint* (Doc. 38) at 1-2 (fn 1) and 22.

More than 120 days have elapsed since the filing of the complaint, and Plaintiff has been given sufficient time to ascertain Defendants' knowledge of Ms. Martinez' whereabouts and to serve Ms. Martinez.

IT IS THEREFORE ORDERED that, pursuant to Fed. R. Civ. P. 41(b), Plaintiff is directed to show good cause **within ten (10) days of the date of this Order** why his claims against Ms. Martinez should not be dismissed for failure to prosecute. Plaintiff is advised that his claims against Ms. Martinez **may be dismissed after thirty (30) days of the date of this order** unless good cause is shown.

IT IS SO ORDERED.



LOURDES A. MARTÍNEZ
UNITED STATES MAGISTRATE JUDGE